

OMIMEX PETROLEUM, INC.

IBLA 90-429

Decided April 7, 1992

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, affirming an assessment for failure to timely abate three violations on Federal lease WYW-24714A. INC No. F-90-07P; SDR No. WY-90-18.

Affirmed.

1. Oil and Gas Leases: Civil Assessments and Penalties--Oil and Gas Leases: Incidents of Noncompliance

BLM may properly assess an operator \$500 for failure to abate three minor violations within the time prescribed where it fails to demonstrate by a preponderance of the evidence that BLM's determination was in error. Violation of Onshore Oil and Gas Order No. 3, requiring valves on equalizer and drain (or recycle) lines to be effectively sealed in a closed position during the production phase, is a minor violation.

APPEARANCES: Naresh K. Vashisht, President, Omimex Petroleum, Inc., for appellant.

OPINION BY ADMINISTRATIVE JUDGE HUGHES

Omimex Petroleum, Inc. (Omimex), has appealed from a May 24, 1990, decision of the Wyoming State Director, Bureau of Land Management (BLM), sustaining the May 1, 1990, letter decision of the Newcastle Resource Area Manager, BLM, assessing Omimex \$500 for failure to take timely corrective action in response to three violations identified in Incident of Noncompliance (INC) F-90-07P.

The INC was issued on April 12, 1990, when a petroleum engineering technician from the Newcastle Resource Area Office, BLM, inspected the Ames Federal Tank Battery, which is situated on Federal lease WYW-24714A and operated by Omimex. The INC referred to Onshore Order No. 3, section III.A.1.b. and cited Omimex for violations as follows: "(1) Recycle lines of both tanks unsealed. On open system must be effectively sealed closed during production[; and] (2) Equalizer line valve must have equipment (dart) to be able to be sealed effectively." The violations totaled three because recycle lines for two tanks were unsealed. Those two open

lines, plus the equalizer line (whose valve could not be effectively sealed), made three unsealed lines. The INC identified the violations as minor and granted Omimex 5 days from date of receipt to correct them.

The INC included the following provision, stamped in red directly above the signature line for the operator's acknowledgement: "If you have difficulty accomplishing the corrective work as specified within the time frame given please call 307-746-4453 to request an extension before the time frame expires."

The INC was received by Omimex in Denver, Colorado, on April 16, 1990. BLM received a signed copy of the INC from Omimex on April 20, 1990, tacitly affirming that the violations had been corrected. 1/ However, a reinspection on May 1 revealed the same conditions as were found during the initial inspection on April 12, 1990. On the same date, the Area Office issued its letter decision noting (1) that the dart had not been added to the equalizer line valve, and (2) that, even though seals had been put through the darts on the two "drain lines," neither of them had been secured. 2/ The Area Office assessed Omimex \$500 pursuant to 43 CFR 3163.1(a)(2): each violation was assessed at \$250, but BLM assessed \$500, the maximum assessment per lease per inspection under the regulations. The Area Office granted Omimex an additional 20 days to correct the violations, notified it that it could seek informal review of its decision, and invited Omimex to bring any unusual or extenuating circumstances to its attention.

BLM reinspected the lease on May 3 and determined the violations had been corrected.

On May 8, 1990, the Area Office conducted an informal review of the assessment. The violations were reviewed and found to be consistent with existing regulations. The assessment was also found to be appropriate.

Thereafter, Omimex sought review by the Wyoming State Director, BLM. Omimex stressed that the violation was minor, and that there was no damage, economic or otherwise, to anyone. Although it had made a sincere effort to correct the problem immediately, the work was not done properly the first time due to mis-communication, and was promptly corrected after it realized that its pumper had made an unintentional error in fixing the problem.

On May 24, 1990, the State Director issued his decision upholding the Area Office's assessment, holding that the "fact that Omimex had internal problems in correcting the violations does not relieve [it] of the responsibility to comply with Onshore Order No. 3 or the regulations in 43 CFR 3160." Although Omimex stressed that the violations were minor and caused

1/ The INC form calls for the recipient to sign the notice and return it to BLM "[w]hen the violation is corrected."

2/ BLM's decision equates the terms "recycle line" and "drain line." We have no basis to conclude that this was incorrect.

no damage, the State Director pointed out that the "basis for the assessment was the fact that the violations were not corrected within the time allowed." Omimex (appellant) appealed to this Board.

Omimex asserts in its statement of reasons that, after receiving the INC, it informed its pumper by telephone and read him the INC. It states that the pumper went to the field the same day and fixed the problem according to what he thought and understood from the telephone conversation with Omimex and the contents of the INC. The next day, the pumper confirmed that everything was fixed and that the lease was in compliance, and Omimex informed BLM that the work was complete. Omimex relates that, after BLM's reinspection on May 1, 1990, revealed that the work was not performed correctly, its pumper went to the Area Office and was told that the work was not performed as instructed and that a letter with a \$500 fine was going out the same day. Omimex states that, after talking to the BLM inspector, the pumper immediately went to the lease and corrected the situation, and that the site was later reinspected and found to be satisfactory.

Omimex stresses again that the violations were minor, with no damage (economic or otherwise) to anyone, and that it made a sincere effort to immediately correct the problem as it understood it from the INC. Omimex argues that the fine of \$500 is unjustified and should be waived because the fact that the work did not get done properly the first time was due to simple miscommunication between the BLM and its office, as shown by the fact that the problem was resolved after its pumper's personal visit to BLM's office. Thus, Omimex denies that the INC is self-explanatory and asserts that any "miscommunication [was] between the BLM Newcastle office and our company." Omimex contends that the necessary corrective action was not clear until the Area Office gave its pumper a full explanation at BLM's office in Newcastle of what corrective action was necessary to comply with the INC.

[1] Onshore Oil and Gas Order No. 3 (Order No. 3) (54 FR 8055-8084 (Feb. 24, 1989)) governs site security and is binding on operating rights owners and operators, as appropriate, of Federal oil and gas leases. 43 CFR 3164.1(b). Order No. 3 governs the use of valves and identifies certain specific acts of noncompliance, rating them as to severity. It also establishes abatement periods for corrective action and provides for extension of the abatement period. Section III.A.1.b., cited in BLM's INC, provides:

All lines entering or leaving all oil storage tanks shall have valves capable of being effectively sealed during the production and sales operations unless otherwise provided under the provisions of this Order. [3/] During the production phase,

3/ "Effectively Sealed" means that the seal is placed "in such a manner that the position of the sealed valve may not be altered, or a component in a measuring system affecting quality or quantity be accessed, without the seal being destroyed." Order No. 3, II.H. (54 FR 8061 (Feb. 24, 1989)).

all valves that provide access to production shall be effectively sealed in the closed position. * * * Any equipment needed for effective sealing, excluding the seals, shall be located at the site. If the sealing equipment is in the possession of the operator's representative or at a centralized field location, it shall be considered to be at the site [reference omitted]. Each ineffectively sealed or appropriate valve not sealed shall be considered a separate violation.

Section III.A.2.a. of Order No. 3, part of its "Enforcement Provisions," identifies several valves that must be "effectively sealed" during the production and sales phase, including drain valves and equalizer valves. That section also provides that the violation is minor, that corrective action consists of "seal[ing] as required," and that the normal abatement period is 2 business days. 54 FR 8062 (Feb. 24, 1989).

It is established that BLM is entitled to assess liquidated damages when a lessee or operator fails to comply with a written order issued by an authorized BLM officer concerning oil and gas operations within the time specified in that order. Diversified Operating Corp., 119 IBLA 107, 108 (1991); Dalport Oil Corp., 104 IBLA 327, 329 (1988). If a finding of noncompliance is technically and procedurally correct, a minimum assessment is properly levied, regardless of lessee's subsequent abatement of the noncompliance condition. Diversified Operating Corp., supra at 108-09; William Perlman, 96 IBLA 181, 186 (1987); Mont Rouge, Inc., 90 IBLA 3, 5 (1985). The law is equally well settled that a party challenging BLM's determination that violations were not abated within the allotted period has the burden to prove by a preponderance of the evidence that BLM's determination is incorrect. Chase Energy, Inc., 115 IBLA 76, 80 (1990).

There is no dispute that the conditions cited in the INC existed as alleged, or that they were not timely abated. It remains to determine only whether there are grounds for reducing or waiving the amount of the assessment imposed by BLM.

Omimex correctly states the violations at issue were "minor." However, the fact that the violations are minor does not divest BLM of authority to assess liquidated damages for failure to correct same within the period prescribed in the INC. The regulations expressly provide that liquidated damages of up to \$500 per lease, per inspection, may be collected for minor violations. 4/

However, we have held that an assessment for a minor violation under 43 CFR 3162.1(a)(2) is discretionary (Fancher Oil Co., 121 IBLA 397, 401-02

4/ Under 43 CFR 3163.1(a)(2), "[w]here noncompliance involves a minor violation, the authorized officer may subject the operating rights owner or operator, as appropriate, to an assessment of \$250 for failure to abate the violation * * * within the time allowed." Under 43 CFR 3163.1(c), assessments under 43 CFR 3163.1(a)(2) "shall not exceed a total of \$500 per operating rights owner or operator, per lease, per inspection."

(1991)), and the regulations provide authority for the State Director to compromise or reduce the amount of the assessment for minor violations on "a case-by-case basis." 43 CFR 3163.1(e). By affirming the assessment, BLM has tacitly held that no such relief is warranted in this case. The Board normally accords deference to such BLM decisions when supported by substantial evidence. See Fancher Oil Co., supra at 402. An appellant may overcome such a decision by a preponderance of the evidence showing that BLM's decision was in error. Fancher Oil Co., supra; Mapco Oil & Gas Co., 94 IBLA 158, 161 (1986).

Omimex requests that the assessment be waived because the INC was not self explanatory, and because its failure to timely abate was the result of mis-communication between it and BLM as to what was required to abate the violation. We do not find these reasons adequate to overturn BLM's assessment in the circumstances presented here. Omimex has not identified other reasonable interpretations of the corrective action called for in the INC from which we might conclude that the INC was not self-explanatory or that it was justified in being uncertain as to how to abate. In any event, even if Omimex was justifiably uncertain how to abate the violation or needed more time to so ascertain, it had only to contact BLM at the telephone number printed in red on the INC form. It is incumbent upon an operator to seek timely clarification of an INC or, alternatively, to seek an extension of the abatement period within which to have BLM clarify what was required. Fancher Oil Co., supra at 402; Dalport Oil Corp., supra at 330. BLM gave Omimex more than the minimum time specified in Order No. 3 to abate the violation, and expressly offered to grant additional time if it was needed. The ease by which any uncertainty held by Omimex as to how to abate the violations could have been erased is demonstrated by the fact that Omimex was able to clarify what needed to be done in one meeting with BLM. It cannot lay the blame for its failure to comply timely on BLM.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

David L. Hughes
Administrative Judge

I concur:

John H. Kelly
Administrative Judge

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